

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

GERRY LYNN DAVIS, JR.

PLAINTIFF

v.

Case No. 4:19-cv-04014

DEPUTY GARY DORMAN, Hempstead County  
Sheriff; JUSTIN HUGHES, Jail Administrator,  
Nevada County Detention Facility; OFFICER  
DREW RATHER, Jailer Nevada County  
Detention Facility; TOMI HASH; REYN BROWN;  
and CODY FERGERSON<sup>1</sup>

DEFENDANTS

**ORDER**

Before the Court is the Report and Recommendation filed July 3, 2019, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 42). Judge Bryant recommends that Defendant Ferguson's Motion to Dismiss (ECF No. 23) be granted in part and denied in part. Specifically, Judge Bryant recommends dismissing Plaintiff's official capacity claims against Defendant Ferguson. Plaintiff has filed Objections to the Report and Recommendation. (ECF No. 44). The Court finds this matter ripe for consideration.

Judge Bryant recommends dismissing Plaintiff's official capacity claims against Defendant Ferguson because Plaintiff failed to identify any policy, custom, or practice of the City of Prescott which contributed to a violation of his constitutional rights. (ECF No. 42, p. 5). Plaintiff argues that his official capacity claims against Defendant Ferguson should not be dismissed because Defendant Ferguson, (1) took part in the alleged illegal search and seizure resulting in this case; (2) never showed Plaintiff the search warrant; and (3) incorrectly read the address on the warrant. (ECF No. 44).

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<sup>1</sup> Defendant Ferguson is incorrectly named as "Ferguson" in the case caption.

Upon consideration, the Court finds no reason to warrant a departure from Judge Bryant's Report and Recommendation. Plaintiff has failed to allege the existence of any policy, custom, or practice of the City of Prescott in both his Second Amended Complaint and his Objections. Therefore, he cannot sustain an official capacity claim against Defendant Ferguson. Accordingly, the Court adopts the Report and Recommendation (ECF No. 42) *in toto*. Defendant Ferguson's Motion to Dismiss (ECF No. 23) is hereby **GRANTED IN PART** and **DENIED IN PART**. Defendant Ferguson's Motion to Dismiss is **DENIED** as to Plaintiff's individual capacity claims. Defendant Ferguson's Motion to Dismiss is **GRANTED** as to Plaintiff's official capacity claims. Plaintiff's official capacity claims against Defendant Ferguson are hereby **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED**, this 24th day of July, 2019.

/s/ Susan O. Hickey  
Susan O. Hickey  
Chief United States District Judge